

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTOR SIV	:	CIVIL ACTION
	:	
v.	:	
	:	
MICHAEL J. ASTRUE*	:	NO. 06-cv-4330-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 23, 2007

Plaintiff was denied social security disability benefits. The Magistrate Judge to whom the case was referred has filed a report recommending that summary judgment be entered in favor of the defendant. Plaintiff has filed objections to the Magistrate's report. Plaintiff's objections will be sustained.

Plaintiff, an immigrant from Cambodia, completed high school but speaks English with some difficulty. He worked as a carpenter and construction worker until 2002, when he injured his lower back at work. The MRI showed abnormality at the L5-S1 level. Plaintiff has sought a variety of treatments but has not been able to return to work due to continuing back pain.

The ALJ found that plaintiff's impairment, though severe, did not meet or equal a listed impairment. Although one could point to evidence cited in other parts of the ALJ's decision to support this finding, it remains unclear what evidence the ALJ relied on to make his finding, and why he discounted evidence that supports the opposite position.

* Substituted pursuant to Fed. R. Civ. Proc. 25(d).

The ALJ also found plaintiff's testimony about his physical condition not entirely credible and concluded that plaintiff had the residual functional capacity to perform a full range of light and sedentary work, with a restriction on repeated bending. The ALJ based his findings on the reports of three medical experts who evaluated plaintiff for workers' compensation. These sources opined that plaintiff's symptoms of pain appear more severe than one would expect from the observable injury to the L5-S1 disc. In particular, plaintiff was found to have demonstrated "inconsistent effort," "indicative of an intentional misrepresentation of one's actual capabilities," during a physical capacity evaluation in 2003. It is to be emphasized, however, that the physicians who actually treated plaintiff have never expressed any doubts about the genuineness of his symptoms. The ALJ does not explain why he places so little weight on these treating sources. Furthermore, even the sources relied upon by the ALJ, with the exception of the inconclusive evaluation in 2003, found plaintiff's residual functional capacity to be more restricted, in particular, by a need to alternate between sitting and standing.

For these reasons, I will remand the case to the Commissioner for further evaluation. An order follows.

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ORDER

AND NOW, this 23rd day of April, 2007, IT IS ORDERED
that:

1. Defendant's Motion for Summary Judgment is DENIED.
2. Plaintiff's Motion for Summary Judgment is GRANTED
IN PART.
3. This matter is REMANDED to the Commissioner for
further development of the record and evaluation of whether
plaintiff is disabled.
4. Pursuant to Fed. R. Civ. Proc. 25(d), the current
Commissioner of Social Security, Michael J. Astrue, is
substituted for Jo Anne B. Barnhart.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.